

PROPOSAL SECTION

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Notice of Administrative Corrections to Proposal Contributions for Care and Maintenance Requirements

Proposed New Rules: N.J.A.C. 10:46D

Take notice that the Department of Human Services, Division of Developmental Disabilities has discovered errors in the notice of proposal of new rules at N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, published in the July 21, 2003 New Jersey Register at 35 N.J.R. 3020(a). The proposal Summary (particularly the second paragraph of the discussion of Subchapter 2) relates that the rules would require individuals to apply for, and maintain eligibility for, the Community Care Waiver, a Title XIX Medicaid program defined in the definition of "CCW" in proposed N.J.A.C. 10:46D-1.3. However, due to oversights in the processing of the notice of proposal for publication in the New Jersey Register, a number of revisions to the proposal Summary and Economic Impact and the text of proposed N.J.A.C. 10:46D-1.1, 1.2, 1.3, 2.1, 2.2 and 3.1 (excepting paragraph (g)2) intended by the Division, altering references to "Medicaid" to the more specific "Community Care Waiver" or "CCW," were not made. Those omitted changes are made to the proposal through this notice of administrative corrections.

Take further notice that the Department is extending the public comment period on the notice of proposal, only in relation to comments on the corrections to the proposal as set forth in this notice, to October 17, 2003. Submit written comments on that amendment by that date to:

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This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposal Summary and Economic Impact follows (additions to proposal indicated in boldface thus; deletion from proposal indicated in brackets [thus]):

Summary

On September 8, 1998, the Division of Developmental Disabilities amended its eligibility rules to incorporate requirements for contributions by the individual for his or her costs of care and maintenance while in residential settings. These amendments were required by P.L. 1995, c.155 which transferred responsibility for the assessment of the ability to pay for these costs from the County Adjuster to the Department of Human Services. The Division amended the requirements for contributing to the cost of care and maintenance on November 15, 1999.

The Division funds the present rules, N.J.A.C. 10:46, that combine its eligibility requirements with the contributions assessment to be cumbersome. Consequently, the Division is deleting the contributions requirements from N.J.A.C. 10:46 and proposing them in these new rules, N.J.A.C. 10:46D. A notice of proposal amending N.J.A.C. 10:46 to delete the requirements for contributions is published elsewhere in this issue of the New Jersey Register.

The new rules are also intended to reflect changes announced by Commissioner Harris in the September 19, 2002 Plan, "New and Expanded Options for Consumers with Developmental Disabilities." The Division has 30,800 persons who are currently on its caseload. This number has more than doubled in the last decade. The Division has been reviewing how it provides services. Under the current system, the Division utilizes a waiting list for residential placement, as its main means to provide services. The Plan calls for new options for individuals living at home.

New Jersey lags behind other states in leveraging financial resources that would allow the

Division to improve existing services and to develop new programs with a focus on individuals living at home. The Division needs to obtain additional revenue through broadening the use of Medicaid waivers and seeking a greater contribution toward services from consumers living in residential programs. Maximizing Federal revenues would enable the State to serve more New Jerseyans in need by reinvesting new revenue in program expansion.

Current rules permit consumers living in residential programs to retain substantial amounts of income from Federal benefits like Supplemental Security Income (SSI). New Jersey is an outlier in the percentage of SSI benefits that can be retained by individuals who are in placement. SSI payments from the Federal government are given to individuals with disabilities to support their room and board expenses. When individuals live in residential programs, many of the room and board expenses are covered in the contract with the provider agency.

Other states have adopted policies requiring individuals living in residential settings to contribute larger percentages toward their room and board while in placement.

In New Jersey, most individuals under the current contribution to care structure keep about 50 percent of their SSI benefit or SSA benefit despite the fact that they may live in a group home that provides for most of their needs. When an individual accumulates more than \$2,000 in cash assets from any source, [Medicaid] Community Care Waiver eligibility is lost. The State must then assume 100 percent of an individual's cost, rather than being reimbursed for 50 percent. Federal revenue is then not available to expand services.

On September 19, 2002, Commissioner Harris outlined her plan for new and expanded options for New Jersey's Consumers with developmental disabilities and their families. As part of that effort, the Division is amending its rules for contributions to the cost of care and maintenance by the individual and clarifying the requirement to apply for eligible benefits (primarily SSI and [Medicaid] Community Care Waiver) prior to receiving waiver services. Residential placement is a waiver service.

The Division is amending and simplifying its rules regarding this process. Previously, the

requirements for contributions for care and maintenance for residential services and application for benefits were contained in the Division's eligibility rules. While the issues are closely linked, the Division has found that combining these two processes in a single chapter was confusing to individuals attempting to understand how the process worked. Consequently, the Division is proposing to amend its eligibility rules at N.J.A.C. 10:46 to delete the requirements for contributions and application for benefits for residential services and to incorporate them into this new chapter.

Subchapter 1 contains the purpose, authority and scope of the rules as well as the definitions used in the rules.

Subchapter 2 deals with the financial assessment. The general standards contained in N.J.A.C. 10:46D-2.1 have been greatly simplified. The requirement to contribute begins prior to residential placement. The requirement for a determination of financial ability to pay, formerly found at N.J.A.C. 10:46-2.5, has been reduced. The determination of the county of legal settlement at N.J.A.C. 10:46-2.5(g) through (1) has been deleted. All requirements for the individual to provide financial information while on a waiting list for services, previously at N.J.A.C. 10:462.1(1), have been deleted. Exceptions for support services only, previously at N.J.A.C. 10:462.1(1), are deleted since the Division no longer uses this terminology.

This section also requires the individual to apply for benefits and comply with the requirements of these programs, primarily [Medicaid] the Community Care Waiver, for which he or she may be eligible prior to the delivery of waiver services. The individual is also responsible to maintain those benefits. The Community Care Waiver (CCW) is a Title XIX Medicaid program, which ensures Federal financial participation for services. It is, therefore, necessary for individuals to apply for the Community Care Waiver prior to the receipt of these services in order to maximize Federal funds for program expansion for individuals not yet being offered services. New Jersey is aligning itself with other states with Community Care Waivers who have had this requirement. This section also points out that the individual remains responsible to reimburse the Division for the full costs of services should he or she be able to do so.

N.J.A.C. 10:46D-2.2 contains the process for determining the ability to contribute. This section differs from N.J.A.C. 10:46-2.5(g) through (1), in that all reference to the county has been deleted. When the law was amended in 1995, the responsibility for determination of the ability to contribute was removed from the county and the Department of Human Services became responsible for these determinations. Therefore, references to this process were no longer needed in the proposed rule.

Subchapter 3 contains the formulas used to calculate the amount of the contribution. The formula for persons with unearned income has been changed to require the individual to contribute 75 percent, rather than 50 percent of his or her Disposable Monthly Income. Under the previous rule, N.J.A.C. 10:46-2.6(k)2 and 3, the individual could retain 50 percent of his or her income, there were many cases where individuals retained more money than they could reasonably spend in a month. Once accumulated funds exceeded \$2,000, the individual lost eligibility for [Medicaid] Community Care Waiver benefits. As a result, the Division has to cover these costs of out-of-State dollars which resulted in less money to serve those individuals waiting for services. This problem was present for those who received both SSI and SSA benefits. Proposed N.J.A.C. 10:46D- 3.1(b) through (g) also indicates those circumstances when the contribution may be less than 75 percent of the individual's unearned income.

The formula for income from wages was also amended to bring it into line with the manner in which Social Security assesses earned income. The previous rule, N.J.A.C. 10:46-2.6(k)4, may have acted as a disincentive for individuals to become gainfully employed because the individuals contributed approximately 25 percent of their earned income. The proposed formula at N.J.A.C. 10:46D-3.1 will allow the individual to keep a greater portion of his or her earned income. The individual will still need to maintain his or her eligibility for [Medicaid] Community Care Waiver benefits. The formula at N.J.A.C. 10:46D-3.1 is calculated for individuals under 18 years of age.

Subchapter 4 allows an agency licensed under N.J.A.C. 10:44A, that serves the individual residentially, to be designated by the Division to collect the contribution. Where a person is placed in a community care residence licensed under N.J.A.C. 10:44B, the Division shall be responsible to collect the contribution.

There is no change in the text of Subchapter 5 on termination procedures from the current rule at N.J.A.C. 10:46-6.1. The statute enacted in 1995 allowed the Department to terminate services if the individual did not contribute. This subchapter describes the steps that may be taken by the Division when the individual does not contribute, despite an assessment that he or she has the ability to pay.

Subchapter 6 addresses appeals. Language has been added at N.J.A.C. 10:46D-6.1 (b) to indicate that adjustments to the contribution based upon changes in income may be handled administratively. In fact, the majority of appeals received by the Division are not really appeals but rather indicate that the income of the individual has changed. In these instances, the Division can make an administrative adjustment to the contribution and no appeal is required. The wording concerning appeals that do not involve material facts has been simplified.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Economic Impact

The proposed new rules will have an impact on those persons already in residential services in that their contribution to the cost of care and maintenance will increase. This increase is justified in that their needs are already being met by the residential placement provided by the Division and the current contribution amount has caused individuals to lose their [Medicaid] Community Care Waiver eligibility. The new rules will still allow them to keep a substantial percentage of their earned income from wages. The amount is anticipated to be approximately \$170.00 a month from Supplemental Security Income (SSI) that the individual keeps to meet personal needs. Under the previous rules, specifically N.J.A.C. 10:46-2.50), the individual was required to apply for and maintain all current and future benefits for which he or she might be eligible. In fact, there was no formal process to ensure that the individual complied. In this rule, it is clearly stated at N.J.A.C. 10:46D-1.1 that the individual must apply for and maintain eligibility for those benefits.

Additionally, there will be a significant positive impact on those persons awaiting services because the money realized from the increased contributions and the requirement to apply to [Medicaid] Community Care Waiver before receiving waiver services will be reinvested in providing services to these and other individuals.

The Division anticipates no increased administrative costs associated with the new rules.

Full text of the corrected proposal rule text of N.J.A.C. 10:46D-1.1, 1.2, 1.3, 2.1, 2.2 and 3.1 follows, with portions of the proposed text not affected by these corrections indicated by "(No change from proposal.)." (additions to proposal indicated in boldface thus; deletions from proposal indicated in brackets [thus]):

10:46D-1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:6D-1 (P.L. 1995, c.155), the Division of Developmental Disabilities, Department of Human Services, (Division) has established guidelines and criteria for determining the financial ability of persons served and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The individual is also required to apply for all benefits, primarily [Medicaid] the Community Care Waiver, for which they are eligible and comply with the requirements of this program prior to residential placement by the Division. He or she is also required to maintain eligibility for these benefits in compliance with the requirements of this chapter.

(b) The individual is responsible to maintain those benefits. Generally, to remain eligible, the individual cannot have more than \$2,000 in cash assets that are not excludable as a resource. The Division's Community Care Waiver is a Medicaid program, which provides Federal financial participation for services. It is, therefore, necessary for individuals to apply for [Medicaid] the Community Care Waiver prior to the receipt of these services, to maximize Federal funds for program expansion for individuals not yet being offered services.

10:46D-1.2 Scope

(a) The provisions of this chapter shall apply to all individuals before they are provided residential services from the Division. The individual is responsible to make application for [Medicaid] the Community Care Waiver and all other benefits for which they are entitled, and to submit financial information to determine their ability to contribute toward the cost of that placement.

(b) (No change from proposal.)

(c) A determination of the ability to contribute is not required for individuals residing in supported living arrangements, in private intermediate care facilities for the mentally retarded/developmentally disabled (ICF/MR) placements not funded by the Division, or those receiving challenge grants or participating in the self-determination project. These individuals are required to apply for and maintain eligibility for [Medicaid] the Community Care Waiver and all other benefits and will be required to directly use those benefits for expenses of daily living.

10:46D-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Assets" - "Assignment" (No change from proposal.)

"Benefits" means all current and future sources of cash and health assistance from Federal, State or private entities, including, but not limited to, Medicare, [Medicaid] Community Waiver, State and Federal funds and any third party support pursuant to statute, rule, order or by contract.

"Burial fund" - "Unearned income" (No change from proposal.)

10:46D-2.1 General standards

(a) The individual or his or her legally responsible relative shall be responsible to apply for [Medicaid] the CCW and to maintain eligibility for these benefits. The individual or his or her legally responsible relative shall also submit complete financial information necessary to assess contribution to care prior to placement or the delivery of services by the Division.

(b) The individual or his or her legally responsible relative shall be responsible to comply with all requirements to maintain continued eligibility for [Medicaid] CCW benefits during the time services are provided by the Division.

(c) At the time of an offer of placement, the individual, legal guardian and/or his or her LRR(s) shall be advised in writing by Division staff that it will be necessary to apply for [Medicaid] the CCW and all other benefits and to submit financial information in order for the Division to determine the ability of the individual and/or LRR(s) to contribute to the cost of care.

(d) - (j) (No change from proposal.)

10:46D-2.2 Determination of financial ability to pay

(a) The individual or his or her legally responsible relative shall be required to apply for [Medicaid] CCW and all other benefits and to provide financial information, including, but not limited to, assets, resources, income, or insurance. The individual or his or her legally responsible relative shall comply with all requirements of [Medicaid] the CCW and N.J.A.C. 10:46D-1.1 to maintain eligibility for benefits.

(b) - (j) (No change from proposal.)

10:46D-3.1 DDD Formula A-DDD(A) for persons over age 18

(a) - (b) (No change from proposal.)

(c) The individual or his or her representative payee is responsible to keep his or her accumulated funds under \$2,000 to ensure continued eligibility for [Medicaid] CCW benefits.

(d) - (h) (No change from proposal.)

(i) The individual or his or her representative payee may utilize the funds from earned income as he or she determines appropriate, however, he or she is responsible to maintain continued eligibility for [Medicaid] CCW benefits.